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OFFICE OF PETITIONS

In re Application of	:	
Sommers et al.	:	DECISION ON PETITION
Application Number: 10/753580	:	TO WITHDRAW HOLDING OF
Filing Date: 01/08/2004	:	ABANDONMENT
Attorney Docket Number: GLOZ 2	:	
00153 (#133821)	:	

This is a decision on the petition, filed on January 9, 2008, to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed on May 17, 2007. A Notice of Abandonment was mailed on December 12, 2007.

Petitioners assert that a proper response was in fact timely filed in the form of an amendment in response to the non-final Office action. In support of the petition, petitioners submitted a copy of a date-stamped post card receipt acknowledging receipt of the response to the Office action dated May 17, 2007 on August 20, 2007. Additionally, petitioners have submitted a copy of the amendment with the present petition.

Petitioners' response to the Office action mailed on May 17, 2007, is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the amendment and request for a three (3) month extension of time was received in the Office but was not matched with the application file.

The date-stamp on the post card of August 20, 2007, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark


Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The amendment filed with the present petition bears a proper certificate of mailing, dated August 17, 2007, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file will be referred to the Technology Center's technical support staff for entry of the response. Thereafter, the application file will be referred to the examiner for action in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.


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